

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Brendan Atwood	Team: Team # 8	CCRB Case #: 200905569	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/15/2009 4:45 PM	Location of Incident: § 87(2)(b)	Precinct: 10	18 Mo. SOL 10/15/2010	EO SOL 10/15/2010	
Date/Time CV Reported Wed, 04/15/2009 5:47 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 04/15/2009 5:47 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Joseph King	06514	920467	NARCBMS
2. DT3 Frederic Ortiz	29004	935440	NARCBMS

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Joseph King	Abuse: Det. Joseph King stopped § 87(2)(b)	§ 87(2)(b)
B.DT3 Joseph King	Abuse: Det. Joseph King searched § 87(2)(b)	§ 87(2)(b)
C.DT3 Joseph King	Discourtesy: Det. Joseph King spoke rudely to § 87(2)(b)	§ 87(2)(b)
D.DT3 Frederic Ortiz	Discourtesy: Det. Frederic Ortiz spoke rudely to § 87(2)(b)	§ 87(2)(b)
E.DT3 Frederic Ortiz	Abuse: Det. Frederic Ortiz refused to provide his name and shield number to § 87(2)(b)	§ 87(2)(b)

Case Summary

§ 87(2)(b) filed this complaint with the CCRB by telephone on April 15, 2009 (encl. 3A-B).

On April 15, 2009, at approximately 4:45pm, Det. Joseph King and Det. Frederick Ortiz of NARCBMS stopped § 87(2)(b). The following allegations resulted:

- **Allegation A – Abuse of Authority:** Det. King stopped § 87(2)(b) § 87(2)(g).
- **Allegation B – Abuse of Authority:** Det. King Searched § 87(2)(b) when he smelled his hand. § 87(2)(g).
- **Allegation C – Discourtesy:** Det. King spoke rudely to § 87(2)(b) § 87(2)(g).
- **Allegation D – Discourtesy:** Det. Ortiz spoke rudely to § 87(2)(b) § 87(2)(g).
- **Allegation E – Abuse of Authority:** Det. Ortiz failed to provide his name and shield number to § 87(2)(b) upon request. § 87(2)(g).

Mediation was offered to § 87(2)(b) but he preferred an investigation into the incident.

Results of Investigation

Civilian Statement(s)

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b) white male who stands 5'8" tall, weighs 220 pounds with brown hair and brown eyes.

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on December 8, 2009 (encl. 4A-E). On April 15, 2009, at approximately 4:45pm, § 87(2)(b) left his apartment, located at § 87(2)(b) in Manhattan, and walked about 1 ½ blocks to a deli on the corner of § 87(2)(b). He entered the deli, bought a can of ginger ale, stepped outside the deli to the left, opened his soda and began to drink from it while standing next to a dumpster and facing 9th Avenue. § 87(2)(b) observed two plainclothes officers walking down the street to his left. § 87(2)(b) recognized the men as police officers because he has seen them inside the 10th Precinct station house, where he picks up his child for a shared-custody arrangement. PO1 was identified by § 87(2)(b) as Det. Joseph King from NARCBMS. PO2, was identified through investigation as Det. Frederic Ortiz from NARCBMS.

§ 87(2)(b) paid little attention to the officers, and continued to drink his soda as they walked past him. The officers got about ½ a block past § 87(2)(b) when they turned back towards him and approached him. Det. King grabbed § 87(2)(b)'s left bicep with a great deal of force and began to pull § 87(2)(b) towards him. Det. King asked § 87(2)(b) "Step to the side please?" § 87(2)(b) replied, "No. Why not in front of everyone who is passing?" Det. King repeated his request and § 87(2)(b) agreed to go to the side of the building as long as Det. King took his hand off of him. Det. King did so and then asked § 87(2)(b) to put the soda down. § 87(2)(b) put the can on the ground next to him, and they walked to the side of the building, so they were facing § 87(2)(b).

Det. King grabbed § 87(2)(b)'s right hand, put it to his nose, smelled it and stated, "Obviously you've been smoking weed." § 87(2)(b) replied, "You're mistaken. I just came out of my house. It's not me." Det. King requested § 87(2)(b)'s ID, and § 87(2)(b) reached into his jacket's left breast pocket and handed it to Det. King. Det. King looked at the ID and asked, "How come you have a different address on here than where you said you live?" § 87(2)(b) said, "What do you care? It's ID and that's it. I live right up the block with my parents. If there is a problem, contact them immediately. Det. Ortiz stood by watching, but had no interaction with § 87(2)(b) at that point.

Det. King returned the ID to § 87(2)(b) without writing down the information and stated, "get the fuck out of here." § 87(2)(b) stated, "Can I get your badge number please?" He pointed to each officer and stated, "I want your badge number and I want your badge number." Det. Ortiz said, "I'm not the one who stopped you. You're a fucking moron." Det. King took his shield out from his pocket, waved it in front of him quickly and tried to put it back into his front pants' pocket, but had some difficulty doing so, which allowed § 87(2)(b) to read the name "King" off of it. Det. King and Det. Ortiz started to walk away and § 87(2)(b) followed them, continuing his request for their shield numbers about six more times. § 87(2)(b) stated to Det. King, "What's your name again? I saw it anyways". Det. King turned around and stated, "Detective King". Det. Ortiz did not provide his information. The officers left the location.

NYPD Statement(s):

Subject Officer: DETECTIVE JOSEPH KING

- Det. King is a § 87(2)(b)-old white male who stands 5'10" tall, weighs 215 pounds, and has brown hair and hazel eyes.
- On April 15, 2009, Det. King worked from 1300-2300 with Det. Frederick Ortiz as part of a buy-and bust operation. Both officers were assigned to an unmarked, blue cargo van, #§ 87(2)(e), of which Det. King was the operator. Neither officer was in uniform.

Memo Book

Det. King's memo book's fly sheet contained the following entries regarding this incident: "2- § 87(2)(b) § 87(2)(b) M/W § 87(2)(b)/510/185. 221.10. § 87(2)(b) @1730 hours, 4/15/09" (encl. 5A-C).

UF-250

The Stop and Frisk Report prepared by Det. King indicates that § 87(2)(b) was stopped on April 15, 2009 at 5:30pm, for 1 minute on suspicion of PL 221.10 (Criminal Possession of Marijuana in the 5th degree) because of "Actions indicative of engaging in drug transaction". Additional circumstances: "Area has high incidence of reported offense of type under investigation; Times of day, day of week, season corresponding to reports of criminal activity; and Proximity to crime location." The officers identified themselves to § 87(2)(b)

verbally as well as with their shields, and explained the reason for stop. Force was used: “hands on suspect,” but § 87(2)(b) was not frisked or searched (encl. 10A).

CCRB Testimony

Det. King was interviewed at the CCRB on February 18, 2010 (encl. 6A-B). On April 15, 2009, at approximately 5:30pm, Det. King and Det. Ortiz were headed Westbound on § 87(2)(b) when they stopped at a red light at the intersection of § 87(2)(b). Det. King observed an individual, identified as § 87(2)(b) about 4-5 feet away walking across the road from north to south, near the officers’ van. The windows of the van were rolled down partially. Det. King smelled marijuana and saw § 87(2)(b) smoking an object, about 1 inch in length, emanating smoke, which Det. King said looked like a marijuana cigarette or marijuana cigar. Det. King decided to stop § 87(2)(b) made a right-hand turn onto § 87(2)(b), parked the vehicle and exited. Det. King estimated that § 87(2)(b) was out of view for about 15-30 seconds. Det. King walked over to § 87(2)(b) and identified himself as a police officer and asked § 87(2)(b) to step over to the area where he was initially observed smoking on 25th Street - a distance of about six feet, and § 87(2)(b) did so. Det. King asked where he was coming from, and § 87(2)(b) replied that he came from his building. Det. King asked § 87(2)(b) if he had been smoking anything, and § 87(2)(b) replied that he had not been. Det. King knew this not to be true, as he had seen him smoking something, so Det. King told Det. Ortiz to look around the area for the marijuana. Det. King could smell the odor of marijuana coming from § 87(2)(b) as he stood about 2 feet away from him. There were no other civilians in close proximity.

§ 87(2)(b) began to act “nasty and rude” and said, “Why are you stopping me? You know me.” Det. King said, “I’ve never seen you before. Do you know who I am?” § 87(2)(b) replied, “no”. Det. King then said, “Well I don’t know you either.” Det. King explained to the investigator that he has no recollection of interacting with § 87(2)(b) prior to this incident. § 87(2)(b) requested Det. King’s name and shield number. Det. King, who’s shield was around his neck and visible, replied, “Detective King. Like Martin-Luther. 6-5-1-4.” Det. Ortiz could not find the object or any marijuana, and so Det. King decided to let § 87(2)(b) go. Det. King said, “Thank you sir.” Det. King could not recall if he requested § 87(2)(b) s ID or if he took down the information verbally. § 87(2)(b) was still angry and Det. King said, “If you’d like to file a complaint, you can go to the 10th Precinct located at § 87(2)(b).” § 87(2)(b) said he knew where to go, as he felt around his clothing for a pen. Det. King asked, “Would you like a pen and paper?” Det. King then walked to his vehicle, retrieved a pen and paper, returned to § 87(2)(b) and handed them to him. § 87(2)(b) took the pen and paper and wrote down Det. King’s name and shield number while standing in front of Det. King. The officers then left the location.

Det. King did not believe that Det. Ortiz had any interaction with § 87(2)(b). The incident lasted about 2-5 minutes. Det. King did not recall whether he had any physical contact with § 87(2)(b) or whether he grabbed § 87(2)(b) s hand and smelled it. Neither officer used any profanity towards § 87(2)(b). Neither officer refused to provide his name or shield number.

Subject Officer: DETECTIVE FREDERICK ORTIZ

- Det. Ortiz is § 87(2)(b)-old Hispanic male, who is bald, stands 5’10” tall, weighs 200lbs, and has brown eyes.
- On April 15, 2009, Det. Ortiz worked on a tour 1127-2100, and was assigned to the Prisoner Van for narcotics observation. Det. Ortiz worked with Det. King, and the officers were

assigned to a dark-blue, unmarked Ford van, #§ 87(2)(e), § 87(2)(b) of which Det. King was the operator. Both officers were dressed in plainclothes.

Memo Book

Det Ortiz did not have any entries in his memo book regarding this incident (encl. 7A-C).

CCRB Statement

Det. Ortiz was interviewed at the CCRB on February 17, 2010 (encl. 8A-B). § 87(2)(g)

§ 87(2)(b): Det. Ortiz explained the object which § 87(2)(b) was holding appeared to be a blunt, and he described it as about three inches long, brown in color, lit with smoke coming from it. Det. Ortiz said he did not smell marijuana, but he could differentiate weed from a cigar or cigarillo because it “Burns different, it’s a longer pull, smoke comes out different”, a distinction Det. Ortiz said he was able to make based on his training. Det. Ortiz stated that he made this observation initially from a distance of about 90 feet, and continued to observe § 87(2)(b) smoking the object as they drove closer to § 87(2)(b)’s location. The closest the officers got to § 87(2)(b) while in their vehicle was about 10 feet. Det. Ortiz said that they had already driven pass § 87(2)(b) and decided to circle the block before approaching him.

Det Ortiz proceeded to search for the object between the areas where they had first observed him and where they stopped him—a distance of about 90 feet. Det. Ortiz could not recall where he looked specifically other than the ground, but thought he may have looked into a garbage can in the immediate area. Det. Ortiz did not recover any narcotics during his search. Det. Ortiz explained that he sees § 87(2)(b) “everyday when he comes in” to the precinct as part of a shared-custody arrangement. Det. Ortiz said that he had “never spoken to him” but he has had to “interact him” by directing him where to sit when § 87(2)(b) goes to the precinct to pick up his child. Det Ortiz said that “every time” he had seen the individual he has had a combative nature. Det. Ortiz clarified that he had no interaction with § 87(2)(b) prior to this incident. Det. Ortiz had no recollection of grabbing or seeing his partner grab or smell § 87(2)(b) s hand. § 87(2)(b) did not ask Det Ortiz for his name and shield number, and he did not refuse to provide them. Neither officer used profanity towards § 87(2)(b)

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of February 25, 2010, with regard to the incident (encl. 18A).

Civilian(s) Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Civilian(s) CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 2A).

Subject Officer(s) CCRB History

- Det. King has been a member of the service for 12 years, and there are no substantiated CCRB allegations against him (encl. 1A).
- Det. Ortiz has been a member of the service for 5 years, § 87(4-b) § 87(2)(g)

Conclusion

Identification of Subject Officer(s)

- Det. King acknowledged that he interacted with § 87(2)(b)
- Det. Ortiz acknowledged that he interacted with § 87(2)(b)

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: Det. King stopped § 87(2)(b)

§ 87(2)(b) testified that Det. King stopped him by grabbing his arm, and asked him if he had been smoking marijuana. Det. King and Det. Ortiz both acknowledged stopping § 87(2)(b) and stated that they observed him smoking what appeared to be a marijuana cigarette or marijuana cigar. Det. King stated that he smelled marijuana when he first observed § 87(2)(b) smoking in close proximity to him, as well as when he approached § 87(2)(b) shortly afterwards.

According to the UF-250 prepared by Det. King, § 87(2)(b) exhibited "Actions indicative of engaging in drug transaction". The UF-250 noted the following additional circumstances which led to the stop: "Area has high incidence of reported offense of type under investigation; Times of day, day of week, season corresponding to reports of criminal activity; and Proximity to crime location." § 87(2)(b) stated that he had not been smoking and was simply drinking a soda. § 87(2)(g)

Allegation B – Abuse of Authority: Det. King searched § 87(2)(b)

§ 87(2)(b) stated that Det. King grabbed his hand, smelled it and stated, "obviously you've been smoking weed." Det. King was unsure whether he grabbed § 87(2)(b)'s hand and smelled it, and could not recall what specific force was used against § 87(2)(b). According to the UF-250, Det. King placed his hands on § 87(2)(b) but it was unclear in what context. Det. King stated that he smelled the odor of marijuana emanating from § 87(2)(b) once he stopped him. § 87(2)(g)

Allegation C – Discourtesy: Det. King spoke rudely to § 87(2)(b)

Allegation D – Discourtesy: Det. Ortiz spoke rudely to § 87(2)(b)

§ 87(2)(b) testified that Det. King stated to him, “get the fuck out of here”, and that Det. Ortiz stated to him, “You’re a fucking moron.” Det. King and Det. Ortiz both denied using any profanity towards § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation E – Abuse of Authority: Det. Ortiz refused to provide his name and shield number to § 87(2)(b) upon request.

§ 87(2)(b) stated that Det. Ortiz did not provide his name or shield number to § 87(2)(b) upon request. Det. King and Det. Ortiz stated that § 87(2)(b) never asked Det. Ortiz for his name and shield number, and only asked for Det. King’s information. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Team: _____

Investigator: _____ :

Signature	Print	Date
Supervisor: _____		
Title/Signature	Print	Date
Reviewer: _____		
Title/Signature	Print	Date
Reviewer: _____		
Title/Signature	Print	Date